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No. 485

In the Supreme Court of the United States

OCTOBER TERM, 1960

JAMES W. ROBINSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statement	2
Argument	4
Conclusion	6

CITATIONS

Cases:

Bell v. *United States*, 254 F. 2d 82, certiorari denied, 358 U.S. 885	4
Finegar v. *United States*, 338 U.S. 160	4
Carroll v. *United States*, 267 U.S. 132	4
Husty v. *United States*, 282 U.S. 694	4
Marron v. *United States*, 275 U.S. 192	6
Morton v. *United States*, 147 F. 2d 28, certiorari denied, 324 U.S. 875	6
United States v. *Guido*, 251 F. 2d 1, certiorari denied, 356 U.S. 950	5

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OPINION BELOW

The opinion of the Court of Appeals (Pet. App. [illegible]) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on September 15, 1960 (R. 247). The petition for a writ of certiorari was filed on October 11, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether there was probable cause to arrest petitioner without a warrant.

2. Whether the shoes and trousers worn by petitioner could properly be seized incidental to his arrest.

STATEMENT

Petitioner and his two co-defendants were convicted in the District of Columbia of housebreaking and grand larceny (J.A. 1, 242). Petitioner was sentenced to concurrent terms of imprisonment of from 4 to 12 years on count one and 3 to 10 years on count two (J.A. 17). On appeal, the Court of Appeals affirmed (J.A. 247).

The sole issue is the validity of the District Court's denial of petitioner's motion to suppress evidence obtained incident to his arrest (J.A. 16). At the hearing on the motion, the following evidence was adduced.

On November 29, 1959, about 4:15 a.m., Officers Bradshaw and Harris noticed a Buick proceeding on New York Avenue at a speed of about 60–65 miles per hour in a 30-mile zone (J.A. 29–30, 51–110). When the Buick came to a stop at an intersection, the two police officers requested the driver to stop after he crossed the intersection. Petitioner's co-defendant, Williams, who was driving the car, obeyed (J.A. 102–103). Williams left the car and asked why he was being stopped. Officer Bradshaw advised him that he was exceeding the speed limit and asked for his driver's license and registration card. Williams called to petitioner, who was seated in the front, to get

the registration card from the glove compartment (J.A. 103–104). As petitioner stepped out of the car to give the registration to Williams the interior lights of the car came on. Officer Harris saw a roll of coins lying under the front seat on the floor of the car and the corner of a canvas bag of the type used by banks (J.A. 112-114). He then turned on his flashlight and examined the bag, which contained other coins (J.A. 106, 113).

When petitioner and his co-defendants were asked if the money was theirs, they remained silent (J.A. 104–107). At that point petitioner and his co-defendants were told to put their hands up and turn around to the car (J.A. 107). Neither Bradshaw or Harris knew of any crimes or crime that had been committed but they arrested them for "investigation" (J.A. 107). At the same time, Officer Bradshaw saw another bank money bag on the floor in the back seat (J.A. 40–41).

An officer drove the car to the Municipal Center where it was impounded (J.A. 42). At the Municipal Center, Bradshaw searched the automobile and took therefrom a hand axe, two bars and a large screw driver—items which Bradshaw had seen prior to the removal of the car to the Municipal Center (J.A. 42, 81).

At the police station, between 5 and 5:30 the same morning, the defendants were searched and a pair of shoes and a pair of trousers were taken from petitioner (J.A. 130). The officer also examined the contents of the bags and found the names of Winston and Park and Shop Pharmacy on checks in the bag (J.A. 132). When Mr. Winston was contacted, he

discovered that his store had been broken into (J.A. 132-135).

ARGUMENT

I. The Court of Appeals properly found that the local police had acted reasonably and that the arrest and ensuing search were valid. The car was properly stopped for a traffic violation. When, in the course of checking on the car's registration, the officers saw the coins, they had reasonable cause to investigate further the moving vehicle which had just been driven at excess speed in the early hours of the morning. See *Brinegar* v. *United States*, 338 U.S. 160; *Husty* v. *United States*, 282 U.S. 694; *Carroll* v. *United States*, 267 U.S. 132, 162. And the combination of these factors here—driving at an excessive rate of speed in the early hours of the morning with coins and money bags in the car, and the failure of defendants to explain the presence of the money—was sufficient to justify an experienced officer in reaching the conclusion that the defendants had committed larceny, even though the officers did not know of a particular theft. This case is closely comparable to *Bell* v. *United States*, 254 F. 2d 82 (C.A. D.C.), certiorari denied, 358 U.S. 885, in which the local police, after stopping a car for a traffic violation, found reason to infer that the occupants had committed a theft, although the police did not then know from whom. As the Court of Appeals pointed out in *Bell*, 254 F. 2d at 85, the power to arrest on probable cause to believe that a felony has been committed means that the officer may be found to have acted reasonably even if

no felony was in fact committed. Here, of course, the obvious inference proved to be the correct one.[1]

2. Petitioner admits that the fruits or means of a crime may be seized incidental to a lawful arrest, but contends that the shoes and trousers seized incidental to his arrest could no be considered a means used to commit the robbery. This contention is answered by the opinion in *United States* v. *Gaido*, 251 F. 2d 1, 3-4 (C.A. 7), certiorari denied, 356 U.S. 950:

> Defendant argues that articles are not "the means" of committing an offense merely because they have been used in the commission of an offense. If, during a robbery, a robber had a gun in his hand, and wore a mask and gloves, the latter to prevent finger prints, defendant, apparently, would concede that such articles could be seized in a search incidental to a lawful arrest. However, the defendant insists that shoes worn during a robbery do not come within that category.
>
> It is not logical to place in different categories a mask and a hat which might have been worn and pulled down upon the face of the robber to make identification more difficult. It is likewise difficult to place in different categories a pair of gloves worn on the hands and a pair of shoes worn on the feet. Surely, the latter would facilitate a robber's getaway and would not attract as much public attention as

[1] As in *Bell*, the fact that the officer said he was arresting for "investigation" is not conclusive. This was merely a layman's fashion of saying that he had grounds to believe an offense had been committed but did not know exactly how the larceny occurred.

> a robber fleeing barefooted from the scene of the hold-up.

Other decisions support this conclusion. Thus, this Court, in *Marron* v. *United States*, 275 U.S. 192, 199, upheld the seizure, incidental to an arrest, of ledgers and utility bills of a saloon, stating "* * * if the ledger was not as essential to the maintenance of the establishment as were bottles, liquors and glasses, it was none the less a part of the outfit or equipment actually used to commit the offense." See, also, *Morton* v. *United States*, 147 F. 2d 28 (C.A. D.C.), certiorari denied, 324 U.S. 875, a murder case in which the court approved the admission into evidence of a blood-stained shirt and trousers found in the defendant's closet and seized as an incident of his arrest.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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